

1 THE HONORABLE MARSHA J. PECHMAN

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON AT TACOMA

8 THAN ORN, individually, THALISA ORN,
9 individually, J.O. and C.O., by their
10 Guardian, CLARISSE ORN,

11 Plaintiffs,

12 vs.

13 CITY OF TACOMA, a municipal
14 corporation; and KRISTOPHER CLARK, in
15 his individual capacity;

16 Defendants.

No. 3:13-cv-05974-MJP

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PRETRIAL ORDER

PARTIES' JOINT PRETRIAL ORDER

**PFAU COCHRAN
VERTETIS AMALA**
ATTORNEYS AT LAW

909 A Street, Suite 700
Tacoma, WA 98402
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JURISDICTION

This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331.

This Court has supplemental subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

CLAIMS AND DEFENSES

(A) Plaintiffs will pursue the following claims at trial:

1. 42 U.S.C. § 1983: Violation of Fourth Amendment as to Kristopher Clark.

Plaintiff Than Orn asserts that Kristopher Clark violated the Fourth Amendment's clearly established prohibitions against excessive force when he employed the use of deadly force against Than Orn for failing to yield or failing to obey instructions without any objectively reasonable belief that Orn posed an immediate threat of harm to himself or others. Than Orn was unarmed and was not suspected of a violent criminal offense. Moreover, Orn was driving out of the path of police officers at an extremely slow speed, but Clark affirmatively created a danger by unlawfully establishing a roadblock which endangered his partner officer, getting out of his vehicle against orders, drawing his gun, chasing the path of Orn's vehicle, and firing 10 rounds at Orn through the passenger side and rear of Orn's vehicle with deliberate indifference to the safety of Orn and those in the immediate vicinity.

2. 42 U.S.C. § 1983: Violation of the Fourth and Fourteenth Amendment as to City of Tacoma – Monell Claim. Plaintiffs allege that the City of Tacoma violated the Fourth and Fourteenth Amendment. Defendant City of Tacoma and the Tacoma Police Department have customs, policies, and practices that amount to deliberate indifference to the rights of persons with whom its officers regularly come into contact, including nonviolent suspects like Than

Orn. Defendants City of Tacoma and the Tacoma Police Department, with deliberate indifference, failed to train the Tacoma Police Department's law enforcement officers and failed to adopt and implement policies for, among other things, the use of de-escalation techniques, non-lethal tactics, proper nonviolent suspect apprehension techniques, and the decision-making process that should accompany use of deadly force.¹ The failure by Defendant City of Tacoma and the Tacoma Police Department to adequately and appropriately train its officers and employee amounts to deliberate indifference to the rights of the persons with whom the Tacoma Police Department's employees regularly come into contact, including nonviolent suspects like Than Orn. It was highly predictable that Defendant's failures would result in constitutional violations, like those that occurred in this case. Plaintiff's permanently debilitating injuries are the foreseeable consequence of the Tacoma Police Department's failure to equip its law enforcement officers with the necessary training and tools to handle recurring situations, such as those involving a nonviolent suspect failing to yield or failing to obey an officer's instructions. The actions of the officers involved, which deprived the Plaintiff of his Constitutional rights, conformed to official policy, custom, and practice of Defendant City of Tacoma. Defendant City of Tacoma and the Tacoma Police Department's policy of shooting an unarmed individual failing to yield, but avoiding officers and driving at an extremely low speed is blatantly unconstitutional and jeopardizes the safety of all citizens, as evidenced by the police shooting of Than Orn. Moreover, Defendant City of Tacoma has ratified the conduct of Defendant Clark in relation to the injuries of Than Orn, by refusing to appropriately sanction Defendant Clark for his actions. Furthermore, the actions of the City of Tacoma and its police

¹ Plaintiffs understand that Defendants believe that Judge Leighton dismissed claims brought under § 1983 in his summary judgment order. Dkt. 124. This order dismissed Plaintiffs' state law negligent hiring, training and supervision claim.

officers resulted in the disintegration of Than Orn's marriage and the destruction of the parent-child relationship between Than Orn and his children J.O., C.O., and Thalisa Orn.

3. Battery as to Kristopher Clark. Defendant Kristopher Clark intentionally shot plaintiff Than Orn multiple times in the back and spine and other parts of his body without provocation, license or justification. The acts of Defendant Clark were done with intent to cause harmful or offensive contact or an apprehension by Than Orn of such contact.

4. Negligence as to City of Tacoma. Defendant City of Tacoma was responsible for the actions of its agents and employees under the theory of *respondeat superior*. Defendant City of Tacoma, through its employees, including the named individual defendant Kristopher Clark and the officers who engaged in a police pursuit of Than Orn, owed a duty to use reasonable care with regard to its attempts to take Than Orn into police custody. Defendant City of Tacoma, through its employees, including the named individual defendant Kristopher Clark and the officers who engaged in a police pursuit of Than Orn, violated that duty through the following activities, including but not limited to, engaging in a police pursuit against policy, blocking all avenues of exit against policy, and firing a weapon into the rear of a moving vehicle.

(B) Defendants will pursue the following defenses at trial:

1. Claims Dismissed on Summary judgment

As an initial matter, defendants assert that the pretrial order should not contain any mention of their "failure to train" claims as all such claims, both federal and state, were dismissed on summary judgment. *Dkt* 124.

1 a. Monell Claim

2 The only *Monell* claim remaining against the City is based upon plaintiffs' theory of
3 ratification. Judge Leighton held that:

4 Municipalities are required to review police shootings and carefully determine
5 whether the shooting complied with local policy, and then determine whether or not
6 discipline is appropriate. A rational jury could find that Clark's decision to shoot was
7 not constitutionally justified, and that Tacoma ratified that unconstitutional decision
8 by determining it was lawful and within policy.

9 Summary judgment on the *Monell* claim against Tacoma is accordingly **DENIED**.
10 *Dkt* 124, p. 12:11-15. Plaintiffs did not address Defendants' summary judgment motion related
11 to the hiring, training and supervision claim, but instead changed to the ratification argument,
12 upon with summary judgment was denied. *Id.*

13 b. State negligence claims

14 Plaintiffs admit that the state claim based upon "hiring, training and supervision was
15 dismissed on summary judgment." *See* FN 1, *supra*; *see also Dkt* 124, pp. 15:3-16:2. As such,
16 the "negligence" claim plaintiffs allege is still survives cannot be based upon negligent hiring,
17 training or supervision. In fact, Judge Leighton's order makes clear that the "negligence" claim
18 that remains is on based upon respondeat superior, premised solely upon a finding that Officer
19 Clark committed the intentional act of "battery." *Dkt* 124, p. 16:4-7:

20 Plaintiffs' negligence claim seeks to hold the City responsible for the actions of its
21 agents, which Defendants acknowledge were acting within the course and scope of
22 their employment. As such, if the jury finds Officer Kristopher Clark liable for the
23 battery of Than Orn, the City of Tacoma is ultimately responsible for the actions of its
24 agents and employees.

25 2. Failure to mitigate – Than Orn. The defendants allege that Than Orn failed to
26 mitigate his damages by refusing to follow medical advice, by failing to take reasonable steps
to meet hygiene requirements, by repeatedly refusing recommended treatment and by

1 continuing to ingest illegal substances, all of which resulted in new and avoidable medical
2 conditions.

3 3. Failure to mitigate as to the destruction of the parent/child relationships. The
4 defendants allege that the destruction of the parent/child relationship between Than Orn and the
5 other plaintiffs is the result of Than Orn's own actions and decisions, including, but not limited
6 to, his significant, ongoing use of illicit substances.

8 3. No Causation. The defendants allege that the destruction of the parent/child
9 relationship was not caused by the defendants' actions. Instead, the relationship was impacted
10 by Clarisse Orn's decision not to expose her children to Than Orn and by Than Orn's illicit
11 drug use, which predated the defendants' actions.

12 4. Qualified Immunity. The defendants allege that Officer Clark is entitled to
13 qualified immunity where he acted reasonably under the totality of the circumstances.

14 5. Punitive Damages. The defendants allege that plaintiffs cannot establish the
15 existence of circumstances sufficient to allow for an award of punitive damages against Officer
16 Clark. Punitive damages cannot be awarded against a municipality.

17 ADMITTED FACTS

18 1. On October 12, 2011, at or around 8:30 p.m., Plaintiff Than Orn was in South
19 Tacoma driving his family car, which was registered to his wife, Clarisse Orn, and to his home
20 address.

22 2. At or about that same time, Tacoma Police Department (TPD) Patrol Sgt. Alan
23 Morris attempted a traffic stop of Orn because Orn was driving without headlights.

24 3. A short time after attempting the traffic stop, Morris called over the police radio
25 system to report that Orn would not stop the vehicle. Approximately five (5) minutes after he
26

1 began following Orn, Morris told dispatch the vehicle was not driving recklessly, just that the
2 driver allegedly would not stop.

3 4. At or about 8:43 p.m., Than Orn continued on toward his apartment complex
4 located at 6634 Tacoma Mall Boulevard.

5 5. At approximately 8:46 p.m., Orn pulled into his apartment complex with TPD
6 K-9 Officer David Johnson directly behind him.

7 6. At or about this same time, Defendant Kristopher Clark was positioned at or
8 very near the north entrance to the parking lot of Than Orn's apartment complex waiting for
9 Orn to arrive.
10

11 7. At some point after Plaintiff Orn pulled into his apartment complex via the south
12 entrance to the parking lot, Defendant Kristopher Clark exited his police vehicle. Defendant
13 Clark is the only TPD officer to draw and fire his weapon at Orn.
14

15 8. Defendant Clark fired his weapon multiple times in the direction of Plaintiff
16 Than Orn's vehicle. Plaintiff Than Orn was struck multiple times in the neck, right shoulder
17 and back by Defendant Clark's gunshots. According to medical reports, Orn suffered complete
18 spinal cord injury (SCI) at the L2-L3 vertebra due to a bullet lodged in his spine. Plaintiff also
19 suffered cervical spine trauma including fractures of the fourth, fifth and sixth cervical vertebrae
20 transverse process, as well as a fracture to his right scapula. Plaintiff Orn did not recover any
21 function below the L1 level of his spine.
22

23 **ISSUES OF LAW**

24 It is plaintiffs' position that Judge Ronald B. Leighton has ruled on Defendants' Motion
25 for Summary Judgment, including a determination that qualified immunity does not apply in
26 this case. This ruling was affirmed by the Ninth Circuit. Plaintiffs believe that the only

1 remaining legal issues, outside of evidentiary rulings, relate to punitive damages and the award
 2 of attorney fees and costs in the event Plaintiffs prevail on their civil rights claims. Plaintiffs
 3 believe that all other matters, including causation, present questions of fact for the jury.

4 Defendants assert that, in addition to evidentiary rulings, the following issues of law
 5 remain to be addressed at trial.

6 **Qualified Immunity as to Officer Clark**

7
 8 Judge Ronald B. Leighton denied Defendants' Motion for Summary Judgment,
 9 including a determination that qualified immunity should not be granted to Officer Clark based
 10 upon viewing the facts in the light most favorable to Plaintiffs. The denial of qualified
 11 immunity has been affirmed by the Ninth Circuit. Defendants note, however, that the Ninth
 12 Circuit indicated that factual disputes between the versions of the events presented by Plaintiff
 13 Than Orn and by Officer Clark must be resolved by the jury, not by a court adjudicating a
 14 motion for summary judgment. *Orn v. City of Tacoma*, 949 F.3d 1167, 1181 (2020) ("When
 15 the facts are viewed in the light most favorable to Orn, as they must be at this point in the
 16 litigation, Clark had 'fair and clear warning of what the Constitution requires.' What Clark
 17 most forcefully contests is whether his alternative account of the shooting should be accepted
 18 as true. Factual disputes of that order must be resolved by a jury, not by a court adjudicating a
 19 motion for summary judgment.) Defendants assert that if at trial they can establish alternative
 20 facts supporting Officer Clark's version of events, they may again seek a finding of qualified
 21 immunity as to Officer Clark.
 22
 23

24 **Causation**

25 Plaintiffs assert that all of Plaintiff Than Orn's medical treatment and current conditions
 26 were caused by Defendants' conduct. Defendants assert that Plaintiffs cannot establish

1 causation as to a significant amount of Plaintiffs' damages as those damages were caused by
 2 Plaintiff Than Orn's own conduct, ongoing drug use and resultant conditions, not Defendants'
 3 conduct.

4 **Punitive Damages as to Defendant Clark under 42 U.S.C. § 1983**

5 Under Washington law, punitive damages are not available on any state claim against
 6 either Defendant. *Dailey v. N. Coast Life Ins. Co.*, 129 Wn.2d 572, 574, 919 P.2d 589, 590
 7 (1996). As to the federal claims, municipalities are immune from punitive damages under §
 8 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S. Ct. 2748, 2762, 69 L.
 9 Ed. 2d 616 (1981).
 10

11 As to the federal excessive force claim against Defendant Clark, Defendants assert that
 12 punitive damages are not appropriate based upon the facts of this case and the standard under
 13 which an award of punitive damages must be measured.
 14

15 Plaintiffs disagree with defendants' position on the issue of punitive damages and assert
 16 that the jury should be instructed on punitive damages and decide whether to award punitive
 17 damages against Defendant Kristopher Clark.

18 **EXPERT WITNESSES**

19 **(A) On behalf of Plaintiffs:**

- 20
 21 1. Neil Robert Bennett (will call)
 22 OSC Vocational Systems, Inc.
 23 10132 NE 185th St
 24 Bothell, WA 98011

25 Neil Robert Bennett has specialized training, background, and expertise in economic
 26 analysis. He will provide testimony based on his review of records. He has provided a report
 in this case and has been deposed.

- 1 2. Cloie Johnson (will call)
2 OSC Vocational Systems, Inc.
3 10132 NE 185th St
4 Bothell, WA 98011

5 Cloie Johnson has specialized training, background, and expertise in rehabilitation and
6 vocational assessment. She will provide testimony based on her review of records. She has
7 provided a report in this case and has been deposed.

- 8 3. Kenneth Muscatel, Ph.D. (will call)
9 411 12th Avenue, Suite 305
10 Seattle, WA 98122

11 Kenneth Muscatel, Ph.D. has specialized training, background, and expertise in
12 psychology. He will provide testimony based on his review of records. He has provided a
13 report in this case and has been deposed.

- 14 4. Virtaj Singh, MD (will call)
15 Seattle Spine & Sports Medicine
16 3213 Eastlake Ave East, Suite A
17 Seattle, WA 98102

18 Virtaj Singh, MD has specialized training, background, and expertise in physical
19 medicine and rehabilitation. He will provide testimony based on his review of records. He has
20 provided a report in this case and has been deposed.

- 21 5. Kay M. Sweeney (will call)
22 KMS Forensics, Inc.
23 P.O. Box 2458
24 Kirkland, WA 98083

25 Kay M. Sweeney has specialized training, background, and expertise in forensic
26 science. He will provide testimony based on his review of records. He has provided a report
in this case and has been deposed.

6. Edward A. Leach (will call)
 P.O. Box 2088
 Coeur d'Alene, ID 83816

Edward A. Leach has specialized training, background, and expertise in law enforcement practices. He will provide testimony based on his review of records. He has provided a report in this case and has been deposed.

(B) On behalf of Defendants:

1. Rebecca Bellerive, RN, CDMS, CCM, CLCP *(will testify)*
5500 Olympic Drive, Suite H105, PMB 244
Gig Harbor, WA 98335
(253) 649-0314

Ms. Bellerive is a registered nurse and certified life care planner who may testify regarding plaintiff Than Orn's possible future care and needs as it relates to the incident of October 12, 2011 as outlined in her report.

2. John Hunter (Expert) *(will testify)*
Investigative Training Services, Inc.
PO Box 16487
Seattle, WA 98116
(425) 788-7590

Mr. Hunter is an accident reconstruction expert who may testify regarding his findings and conclusions from his review of reports, photographs and inspection of the accident site as outlined in his report.

3. Jennifer James, M.D. *(will testify)*
Northwest Physical Medicine
801 Pine Street, Suite 100
Seattle, WA 98101
(206) 226-9183

Dr. James is board certified in Physical Medicine and Rehabilitation and Spinal Cord Injury Medicine and is expected to testify as her evaluation and assessment of plaintiff Than Orn and any recommended treatment as it relates to Mr. Orn's long-term prognosis as outlined in her reports.

- 1
2 4. Matthew Noedel (*will testify*)
3 13002 151st Street East
4 Puyallup, WA 98374
5 (253) 227-5880

6 Mr. Noedel is a forensic scientist specializing in ballistics, firearms, crime scene
7 examination and crime scene reconstruction. Mr. Noedel is expected to testify regarding the
8 forensic aspects of the shooting as it relates to Plaintiff Than Orn's injuries, as outlined in his
9 report.

- 10 5. William Partin, CPA, ABV, MAFF (*will testify*)
11 400 108th Avenue NE, Suite 615
12 Bellevue, WA 98004
13 (425) 455-0303

14 Mr. Partin is a Certified Public Accountant who may testify regarding plaintiff
15 Than Orn's economic damages as outlined in his reports.

- 16 6. Urey W. Patrick (Expert) (*will testify*)
17 Patrick Consulting
18 309 Sage Road
19 Virginia Beach, VA 23456
20 757-426-6389

21 Mr. Patrick is expected to testify concerning the police procedures and the force
22 used by Officer Kristopher Clark during the October 12, 2011, pursuit and shooting of Than
23 Orn, given the circumstances and information available to Officer Clark at the time of the
24 incident as outlined in his report.

- 25 7. Jennifer Piel, J.D., M.D. (Expert) (*will testify*)
26 4111 E. Madison Street, Suite 357
Seattle, WA 98112
(206) 295-9114

Dr. Piel is board certified in psychiatry, neurology and forensic psychiatry. Dr. Piel will testify regarding her records review, psychiatric testing, examination and assessment of plaintiff Than Orn as outlined in her reports.

8. Thomas Wickizer, Ph.D., MPH (Expert) *(will testify)*
Chair, Division of Health Services Management and Policy
College of Public Health
202 Cunz Hall
1841 Neil Avenue
Ohio State University
Columbus, OH 43210
(614) 688-3854

Dr. Wickizer will testify regarding the reasonable value of medical treatment and services provided to plaintiff Than Orn and any anticipated medical treatment and services that may be provided to Mr. Orn in the future as outlined in his report.

9. Elizabeth Ziegler, Ph.D. (Expert) *(will testify)*
Clinical and Forensic Neuropsychology
421 West Riverside Ave, Suite 717
Spokane, WA 99201
(509) 995-9265

Dr. Ziegler is a psychologist and neuropsychologist who will testify regarding her records review, neuropsychological testing, examination and assessment of plaintiff Than Orn as outlined in her reports.

OTHER WITNESSES

(A) On behalf of Plaintiffs:

1. Michael Ake (may call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

1 Michael Ake may testify regarding his review of the circumstances surrounding the
2 events of October 12, 2011 and his determination that Tacoma Police Department officers'
3 actions related to those events were within departmental policy.

- 4
5 2. Daniel Bortle (may call)
c/o Jean Homan
747 Market Street, Suite 1120
6 Tacoma, WA 98402
(253) 591-5629

7 Daniel Bortle may testify regarding his observations and actions relating to the events
8 of October 12, 2011.

- 9
10 3. Steven Butts (will call)
c/o Jean Homan
747 Market Street, Suite 1120
11 Tacoma, WA 98402
(253) 591-5629

12 Steven Butts will testify regarding his observations and actions relating to the events of
13 October 12, 2011.

- 14
15 4. Kristopher Clark (will call)
c/o Jean Homan
747 Market Street, Suite 1120
16 Tacoma, WA 98402
(253) 591-5629

17 Kristopher Clark will testify regarding his observations and actions relating to the events
18 of October 12, 2011.

- 19
20 5. Robert DeNully (will call)
c/o Jean Homan
747 Market Street, Suite 1120
21 Tacoma, WA 98402
(253) 591-5629

22 Robert DeNully will testify regarding his observations and actions relating to the events
23 of October 12, 2011.

- 24
25 6. David Johnson (may call)
c/o Jean Homan
747 Market Street, Suite 1120
26 Tacoma, WA 98402
(253) 591-5629

David Johnson may testify regarding his observations and actions relating to the events of October 12, 2011.

7. Richard Kim (may call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Richard Kim may testify regarding his observations and actions relating to the events of October 12, 2011.

8. Gene Miller (will call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Gene Miller will testify regarding his observations and actions relating to the events of October 12, 2011.

9. Alan Morris (will call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Alan Morris will testify regarding his observations and actions relating to the events of October 12, 2011.

10. Donald Ramsdell (will call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Donald Ramsdell will testify regarding his review of the circumstances surrounding the events of October 12, 2011 and his determination that Tacoma Police Department officers' actions related to those events were within departmental policy.

11. Donald Rose (will call)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Donald Rose will testify regarding his observations and actions relating to the events of October 12, 2011.

12. Than Orn (will call)
c/o Pfau Cochran Vertetis Amala
909 A Street, Suite 700
Tacoma, WA 98402

Than Orn is the plaintiff in this case. He has been deposed and will provide testimony about the underlying incident and the damages stemming therefrom.

13. Clarisse Orn (will call)
c/o Pfau Cochran Vertetis Amala
909 A Street, Suite 700
Tacoma, WA 98402

Clarisse Orn is the natural mother of minor children J.O. and C.O. She will provide testimony about the underlying incident and the damages stemming therefrom.

14. C.O. (may call)
c/o Pfau Cochran Vertetis Amala
909 A Street, Suite 700
Tacoma, WA 98402

C.O. is the natural child of Plaintiffs Than Orn and Clarisse Orn. She may provide testimony about the underlying incident and the damages stemming therefrom.

15. J.O. (may call)
c/o Pfau Cochran Vertetis Amala
909 A Street, Suite 700
Tacoma, WA 98402

J.O. is the natural child of Plaintiffs Than Orn and Clarisse Orn. He may provide testimony about the underlying incident and the damages stemming therefrom.

16. Thalisa Orn (may call)
c/o Pfau Cochran Vertetis Amala
909 A Street, Suite 700
Tacoma, WA 98402

Thalisa Orn is the natural child of Plaintiff Than Orn. She may provide testimony about the underlying incident and the damages stemming therefrom.

1 17. Salvador Mungia (will call)
2 c/o Pfau Cochran Vertetis Amala
3 909 A Street, Suite 700
4 Tacoma, WA 98402

5 Salvador Mungia is Than Orn's appointed Litigation Guardian Ad Litem (LGAL). He
6 will provide testimony about his role as Than Orn's LGAL.

7 Defendants object to the identification of Mr. Mungia as a trial witness. He was appointed
8 weeks ago, yet just listed as a witness on November 17, 2020. Further, any testimony by Mr.
9 Mungia would be improper and highly prejudicial, confuse the jury and invoke speculation by
10 the jurors, especially given plaintiffs' denial that Mr. Orn is incompetent and will available to
11 provide his own testimony.

12 18. Dr. Alexander Mohit (will call)
13 MultiCare Tacoma General Hospital
14 315 M.L.K. Jr. Way
15 Tacoma, WA 98405

16 Dr. Alexander Mohit treated Plaintiff in this case. He will provide testimony about the damages
17 stemming from the underlying incident.

18 19. Dr. Michelle Strong (may call)
19 MultiCare Tacoma General Hospital
20 315 M.L.K. Jr. Way
21 Tacoma, WA 98405

22 Dr. Michelle Strong treated Plaintiff in this case. She will provide testimony about the damages
23 stemming from the underlying incident.

24 20. James Martin, PA-C (may call)
25 MultiCare Tacoma General Hospital
26 315 M.L.K. Jr. Way
Tacoma, WA 98405

James Martin, PA-C treated Plaintiff in this case. He may provide testimony about the damages
stemming from the underlying incident.

21. Nona Govella, RN (may call)
MultiCare Tacoma General Hospital
315 M.L.K. Jr. Way
Tacoma, WA 98405

Nona Govella, RN treated Plaintiff in this case. She may provide testimony about the damages stemming from the underlying incident.

22. Dr. Francis Wessbecher (may call)
MultiCare Tacoma General Hospital
315 M.L.K. Jr. Way
Tacoma, WA 98405

Dr. Francis Wessbecher treated Plaintiff in this case. He may provide testimony about the damages stemming from the underlying incident.

23. Dr. Fred Thompson (may call)
MultiCare Tacoma General Hospital
315 M.L.K. Jr. Way
Tacoma, WA 98405

Dr. Fred Thompson treated Plaintiff in this case. He may provide testimony about the damages stemming from the underlying incident.

(B) On behalf of Defendants:

1. Officer Daniel Bortle (*will testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Officer Bortle may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

2. Tifni Buchanan (*will testify*)
South Sound 911
945 Tacoma Avenue South
Tacoma, WA 98402
(253) 798-6588

Ms. Buchanan will testify about the Computer Aided Dispatch (CAD) system and the records obtained from the CAD system.

3. Officer Steven Butts (*will testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Officer Butts may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

4. Officer Kristopher Clark (*will testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Defendant Officer Clark will testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

5. Officer Robert DeNully (*may testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Officer DeNully may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

6. Forensic Specialist Paul DePoister (*will testify*)
c/o Jean Homan
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 581-5885

Specialist DePoister may testify, if necessary, about the photographs of the evidence

collected as a result of the shooting, taken by Specialist DePoister prior to the evidence being released to plaintiff's retained forensic expert, Kay Sweeney, as well as his processing of the palm print on the Orn vehicle.

7. Lamarcus Gholston (*may testify*)
14523 "C" Street, Apt. 12
Tacoma, WA 98444
(253) 754-4694

Mr. Gholston may testify regarding his observations regarding the events of October 12, 2011.

8. Sergeant Henry Gill (retired) (*may testify*)
Officer Mike Rowbottom
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Sergeant Gill or Officer Rowbottom may testify about use of force training provided to officers by the Department, including, but not limited to, range training and scenario-based training.

14. Sergeant David Johnson (*may testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Sergeant Johnson may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

15. Sergeant Richard Kim (*may testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Sergeant Kim may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

16. Sergeant Richard Kim (*may testify*)
c/o Jean Homan

747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Sergeant Kim may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

17. Asa Louis, Forensic Scientist (*will testify*)
Washington State Patrol Toxicology Laboratory
2203 Airport Way South, Suite 360
Seattle, WA 98134
(206) 262-6100

Mr. Louis may testify regarding his testing and analysis of Than Orn's blood sample, and subsequent report.

18. Michelle Martin (*will testify*)
621 Washington Ct SW
Mukilteo, WA 98275

Ms. Martin is the mother of Plaintiff Thalisa Orn and ex-wife of Plaintiff Than Orn. Ms. Martin may testify regarding her knowledge, observations and interactions with plaintiffs.

19. Detective Gene Miller (former TPD) (*may testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Detective Miller may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

20. Than Orn (*will testify*)
c/o Pfau Cochran Vertetis Amala, PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402
(253) 777-0799

21. Thalisa Orn (*will testify*)
c/o Pfau Cochran Vertetis Amala, PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402
(253) 777-0799

22. C.O. (*may testify*)
c/o Pfau Cochran Vertetis Amala, PLLC

911 Pacific Avenue, Suite 200
Tacoma, WA 98402
(253) 777-0799

23. J.O. (*may testify*)
c/o Pfau Cochran Vertetis Amala, PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402
(253) 777-0799

24. Clarissa Orn (*will testify*)
c/o Pfau Cochran Vertetis Amala, PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402
(253) 777-0799

Plaintiffs may testify regarding the events of October 12, 2011, and their alleged injuries and treatments.

25. They Prim (*may testify*)
1504 E. 97th Street
Tacoma, WA 98445

Mr. Prim is the father of plaintiff Than Orn and may testify regarding his knowledge, observations and interactions with plaintiff Than Orn.

26. Tacoma Police Chief Don Ramsdell (*may testify*)
c/o Jean Homan
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 581-5885

Chief Ramsdell may testify about his review of the circumstances surrounding the shooting and his determination that the officer's use of force was reasonable and within departmental policy.

27. Officer Donald Rose (*will testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

Officer Rose may testify regarding his observations and actions relating to the events of October 12, 2011, and documented in Tacoma Police Incident Report No. 11-2851184.

28. Shane Smith (*may testify*)
6830 Tacoma Mall Blvd, Apt. 102
Tacoma, WA 98409
(206) 550-3867

Mr. Smith may testify regarding his observations regarding the events of October 12, 2011.

29. Deshawna Smith Veasley (*may testify*)
218 Camden Crossing
Clarksville, TN 37040
(917) 564-7771

Ms. Veasley may testify regarding her observations regarding the events of October 12, 2011.

30. Pierce County Prosecutor's Office (*may testify*)
c/o Jean Homan
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5629

A representative of the Pierce County Prosecutor's Office may testify regarding Plaintiff Than Orn's acquittal on the criminal charges, including the jury instructions and varying burden of proof.

EXHIBITS

See Exhibit List attached as Exhibit A.

ACTION BY THE COURT

- (a) This case is scheduled for trial before a jury on November 23, 2020.
- (b) Trial briefs shall be submitted to the court on or before October 30, 2020.

(c) Jury instructions requested by either party shall be submitted to the court on or before October 30, 2020. Suggested questions of either party to be asked of the jury by the court in voir dire shall be submitted to the court on or before October 30, 2020.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

Dated this 19th day of November, 2020.



Marsha J Pechman
United States District Judge

Approved by the undersigned and dated this 18th day of November, 2020.

PFAU COCHRAN VERTETIS AMALA, PLLC

By /s/ Darrell L. Cochran

Darrell L. Cochran, WSBA No. 22851
Thomas B. Vertetis, WSBA No. 29805
Andrew S. Ulmer, WSBA No. 51227
Alexander G. Dietz, WSBA No. 54842

Attorneys for Plaintiffs

COCHRAN DOUGLAS, PLLC

1 By /s/ Loren A. Cochran
2 Loren A. Cochran, WSBA No. 32773

3 *Attorney for Plaintiffs*

4 **LAW OFFICE OF THOMAS A. BALERUD**

5
6 By /s/ Thomas A. Balerud
7 Thomas A. Balerud, WSBA No. 19539

8 *Attorney for Plaintiffs*

9 **FREY BUCK, P.S.**

10
11 By /s/ Anne M. Bremner
12 Anne M. Bremner WSBA No. 13269

13 By /s/ Karen L. Cobb
14 Karen L. Cobb, WSBA No. 34958

15 *Attorneys for Defendants*
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